

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alona Katz	Team: Team # 1	CCRB Case #: 200404015	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/04/2003 9:45 PM	Location of Incident: 148th Street & Broadway	Precinct: 30	18 Mo. SOL 11/4/2004	EO SOL 11/4/2004	
Date/Time CV Reported Fri, 04/30/2004 4:02 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 04/30/2004 4:02 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gregory Pekera	04870	919546	PBMN TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Aimee Melenciano	20345	930722	PBMN TF
2. POM John Mateojerez	06590	930662	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gregory Pekera	Abuse: Sergeant Gregory Pekera threatened to arrest § 87(2)(b)	
B.SGT Gregory Pekera	Force: Sergeant Gregory Pekera used physical force against § 87(2)(b)	
C.SGT Gregory Pekera	Abuse: Sergeant Gregory Pekera threatened § 87(2)(b) with the use of pepper spray.	

Synopsis

On May 4, 2003, § 87(2)(b) and her young son were passengers in a livery cab that was pulled over by Sgt. Pekera. Sgt. Pekera and his partners, PO Mateo-Jerez and PO Melenciano, intended to issue the livery cab driver a summons for an illegal street hail and a broken taillight. After collecting the driver's information, the officers returned to their police van to prepare the summons. § 87(2)(b) who had grown tired of waiting, approached the police vehicle and asked how much longer the stop would take. During § 87(2)(b)'s interaction with Sgt. Pekera, in which he accused her of disorderly conduct, she complained that he threatened her with arrest if she did not provide identification (Allegation A). When Sgt. Pekera then attempted to arrest her, § 87(2)(b) complained that he used physical force against her (Allegation B) and threatened her with the use of pepper spray (Allegation C). After § 87(2)(b) was handcuffed she was taken back to the precinct where she then provided her identification. She was released with two summonses, for disorderly conduct and harassment. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) black female, was interviewed at the CCRB on April 30, 2004 (enc.9A-C). On May 4, 2003 around 9:45 PM, § 87(2)(b) and her § 87(2)(b) son were returning home from his birthday dinner at BBQ in a livery cab that they had hailed at 150th Street and Broadway. Around 148th Street, a marked police van pulled over the livery cab. Two uniformed officers, later identified as PO Mateo-Jerez and PO Melenciano approached the cab and asked the cab driver for his documentation in order to issue a summons for a missing taillight. After receiving the cab driver's information, the officers told § 87(2)(b) that it would take about 10 minutes and returned to their vehicle.

After about 10 minutes of waiting, § 87(2)(b) decided to approach the van to see how much longer they were going to be because she wanted to go home. She observed that PO Mateo-Jerez was sitting in the front passenger seat and an officer, later identified as Sgt. Pekera, was sitting in the front driver's seat. § 87(2)(b) approached the driver's side and asked Sgt. Pekera how much longer it would take. PO Mateo-Jerez courteously replied that it would probably be another ten minutes but Sgt. Pekera told her that it would take however long it needed to take and she had no right to question the officers. He also stated that § 87(2)(b) was guilty of a violation § 87(2)(b) could not remember specifically what) because she had gotten out of the taxi and approached the van. Sgt. Pekera then said, "Do you have ID? Because you can be arrested if you don't" (Allegation A). § 87(2)(b) explained that she did not interpret this as a request for identification. She thought that Sgt. Pekera was only making a statement about what could possibly happen. She told Sgt. Pekera that the cab driver was just a citizen trying to make a living. Sgt. Pekera then warned her to return to the cab or she would be arrested. § 87(2)(b) replied that Sgt. Pekera could do whatever he wanted and began to walk back to the cab.

As § 87(2)(b) approached the door of the cab, Sgt. Pekera came up behind her and pulled her arms behind her back. He then bent § 87(2)(b) forward over the trunk end of the car (Allegation B). § 87(2)(b) denied that she resisted arrest. Her son, who was watching from inside the car, jumped out and began crying. One of the other officers took him aside. Sgt. Pekera began yelling at her to drop her pocketbook and keys, which she was still holding in her hands. He told her that this would teach her to listen to an officer. He also threatened, "Your gonna make me mace you" (Allegation C). Sgt. Pekera ordered § 87(2)(b) to drop her pocketbook and keys twice before she complied. After she dropped them he handcuffed her and summoned PO Melenciano to pick up her belongings.

As Sgt. Pekera walked her back to the police van, he asked her why she hadn't shown him her identification. § 87(2)(b) told him that she had chosen not to. She and her son were then transported back to the 30th Precinct where she was issued two summonses, for harassment and disorderly conduct for using abusive language, and released. § 87(2)(b) went to court to contest the summonses, both of which were dismissed.

Results of Investigation

Officer Identification

§ 87(2)(b) was able to identify Sgt. Pekera by name during her CCRB statement. Sgt. Pekera identified his partners on the date of occurrence as PO Mateo-Jerez and PO Melenciano. Their CCRB statements additionally confirmed their presence on the scene.

Officer Statements

Sgt. Pekera

Sgt. Pekera was interviewed at the CCRB on June 17, 2004 (enc.10A-C). On May 4, 2003, Sgt. Pekera was working with PO Mateo-Jerez and PO Melenciano. He was assigned to the Mobile Stabilization Unit. The officers were working in uniform and assigned to a marked police van. Sgt. Pekera was the operator.

Around 9:45 PM, Sgt. Pekera was conducting taxi and livery cab stops along Broadway in order to ensure that livery cabs weren't stopping in the street and causing traffic jams. Sgt. Pekera and PO Mateo-Jerez observed an individual, later identified as § 87(2)(b) commit a violation by hailing a livery cab in the street. They followed the cab for less than a block before pulling it over by utilizing their lights and sirens. Sgt. Pekera's intention was to obtain the cab driver's paperwork in order to issue him a summons for accepting a street hail. Sgt. Pekera approached the driver's side of the vehicle as PO Mateo-Jerez approached the passenger side. The officers had no interaction with § 87(2)(b) at that time. Her son was also in the cab with her. After retrieving the driver's paperwork, Sgt. Pekera and PO Mateo-Jerez returned to the van, which was parked behind the cab, to prepare the summons.

After about 5-6 minutes, § 87(2)(b) approached the passenger side of the van and began asking why the officers were delaying the driver and issuing him a summons. She complained that the driver was a working man and began using profanity such as, "This is fucking ridiculous" and "Why are you fucking bothering a working guy?" § 87(2)(b) also flailed her arms as she screamed, causing people on the sidewalk to gather and watch. About 12-15 people gathered, which Sgt. Pekera stated was above and beyond normal sidewalk conditions. § 87(2)(b) turned to the people on the sidewalk and in a loud tone of voice said, "Look what these guys are doing. He's a working guy. I have to go places. This is ridiculous." She also said, "Can you believe these fucking cops? They're always doing this. This is ridiculous. I'm trying to get home. I have my son." § 87(2)(b) was standing right by the open window of the front passenger side of the van. Sgt. Pekera observed that several times she poked her finger inside the window of the van, where PO Mateo-Jerez, who was busy preparing the summons, was seated. Sgt. Pekera thought that she was going to try and grab the summons or PO Mateo-Jerez's pen. He also explained that § 87(2)(b) was standing in the street by the van which could have potentially caused a dangerous situation.

Sgt. Pekera grew leery of § 87(2)(b)'s actions and told her, "Ma'am, please get back to the cab. Stop with the cursing. You'll be on your way as soon as we finish writing the summons." He denied saying that § 87(2)(b) had no right to question a police officer. He told her that the summons was going to take as long as it was going to take and she needed to go back to the cab. Sgt. Pekera asked § 87(2)(b) several times to return to the cab but she continued to curse and carry on. He also told her, "If you keep going, I'm going to give you a summons for disorderly conduct." § 87(2)(b) replied, "Fine, whatever you have to do. I don't care. You're the police." Sgt. Pekera then told her to give him her ID because he was going to issue her a summons. When § 87(2)(b) told him she didn't have ID, Sgt. Pekera told her that if she didn't have ID he was going to have to arrest her. § 87(2)(b) told Sgt. Pekera to do whatever he had to do.

Sgt. Pekera then ordered PO Mateo-Jerez to arrest § 87(2)(b). At that point, § 87(2)(b) left the side of the van and began returning to the cab. § 87(2)(b) pulled her young son, who was sitting in the cab with the door open, out of the cab and positioned him in between herself and the officers. She continued to curse and call out to the people who were watching. Sgt. Pekera told § 87(2)(b) to move her child and put her hands behind her back because she was under arrest. When she did not comply, Sgt. Pekera told her, "Ma'am, I'm not gonna fight you. If I have to, I'll mace you." Sgt. Pekera explained that if § 87(2)(b) had continued to ignore his orders he would have pepper sprayed her rather than engage in a physical altercation. He would prefer to pepper spray § 87(2)(b) to gain her compliance to avoid

having to physically rough her up or grab her. Sgt. Pekera told her that he needed her to comply and put her hands behind her back. When § 87(2)(b) appeared to quiet down, Sgt. Pekera took the opportunity to move her son aside. The presence of her son had prevented Sgt. Pekera from handcuffing her. Sgt. Pekera then grabbed § 87(2)(b)'s left hand and turned her around, putting her against the car. When he told her to give him her other hand she stiffened up. Sgt. Pekera ordered § 87(2)(b) to give him her hands because she was under arrest and didn't have a choice. Finally, Sgt. Pekera had to pull § 87(2)(b)'s hands behind her back. PO Mateo-Jerez was standing behind Sgt. Pekera throughout the incident. The driver of the livery cab stayed in his vehicle the entire time.

The officers transported § 87(2)(b) and her son back to the precinct. At the precinct, PO Mateo-Jerez informed Sgt. Pekera that § 87(2)(b) was now cooperating and providing her identification. Sgt. Pekera decided that if she had no open warrants she could be let go with a summons. He issued her a summons for disorderly conduct, for using obscene and abusive language in a public place. He also issued her a summons for harassment. The legal basis for the harassment summons was that § 87(2)(b) had repeatedly engaged in conduct, which caused an annoyance and had no legitimate purpose. Sgt. Pekera explained that § 87(2)(b) had continued to yell and scream despite his repeated orders to stop. § 87(2)(b) had also repeated her remarks over and over again and troubled PO Mateo-Jerez, who was trying to write a summons, by yelling in his ear.

PO Mateo-Jerez

PO Mateo-Jerez was interviewed at the CCRB on June 30, 2004 (enc.11A-D). On May 4, 2003, PO Mateo-Jerez was working with Sgt. Pekera and PO Melenciano and assigned to patrol in a marked police van. Sgt. Pekera was the operator of the van and PO Mateo-Jerez sat in the front passenger seat. Around 9:45 PM, the officers stopped a livery cab for an illegal street hail around 148th Street and Broadway. PO Mateo-Jerez approached the cab and returned the necessary paperwork from the driver so he could prepare a summons. There was no interaction between him and the passengers of the cab, later identified as § 87(2)(b) and her young son.

PO Mateo-Jerez had returned to the van and was preparing the summons when § 87(2)(b) appeared at his open window. She began screaming, "You got some better things to do. You fucking with people and people got places to go." She used the word "fuck" repeatedly and PO Mateo-Jerez described her as "nonstop going on and on." § 87(2)(b) was also pointing with her finger and it looked like she was going to reach inside the van or try and grab PO Mateo-Jerez's pen. Sgt. Pekera repeatedly told § 87(2)(b) to get off the street, get back in the vehicle, and stop being disorderly. § 87(2)(b) continued to scream and use profanity and Sgt. Pekera finally told her, "If you don't get out of the middle of the street and get back in the cab I'm gonna give you a summons." § 87(2)(b) replied, "You do what the fuck you gotta do." For a second time, Sgt. Pekera warned § 87(2)(b) that she could receive a summons. He then decided to proceed with issuing the summons and asked her to provide identification. When § 87(2)(b) replied, "I ain't got no fucking ID", Sgt. Pekera told her that if she didn't have ID she was going to be arrested. "You fucking do what you have to do", § 87(2)(b) replied and began walking back to the cab.

Sgt. Pekera and PO Mateo-Jerez exited the van and approached the cab. PO Mateo-Jerez went to the driver's side of the vehicle in order to issue the summons he had prepared for a broken taillight. Sgt. Pekera had followed § 87(2)(b) to the rear passenger side of the cab and was repeatedly ordering her to put her hands behind her back. § 87(2)(b) then used her son as a "shield" by putting him between her and the officers. Sgt. Pekera was trying to grab her hands. PO Melenciano moved the son out of the way. Eventually, PO Mateo-Jerez assisted Sgt. Pekera in putting § 87(2)(b)'s arms behind her back. § 87(2)(b) was moving around, would not put her hands behind her back, and pulled them away. PO Mateo-Jerez never heard Sgt. Pekera warn § 87(2)(b) that he was going to use pepper spray. After § 87(2)(b) was handcuffed they all returned to the precinct where Sgt. Pekera issued her two summonses. PO Mateo-Jerez affirmed that from what he observed of § 87(2)(b)'s actions, her behavior constituted disorderly conduct.

PO Melenciano

PO Melenciano was interviewed at the CCRB on July 7, 2004 (enc.12A-D). On May 4, 2003, PO Melenciano was assigned to the "Mobile Van" unit and working with Sgt. Pekera and PO Mateo-Jerez in a marked police van. She was seated in the rear passenger seat. Around 9:45 PM, the officers pulled over a livery cab after observing it pick up a female passenger in the street. The livery cab also had a broken taillight. PO Melenciano and PO Mateo-Jerez approached the cab to obtain the driver's information. There was a female passenger, later identified as § 87(2)(b) and her son in the back passenger seat. The officers had no interaction with her at this time and returned to the van.

After a couple of minutes, § 87(2)(b) approached the open passenger side window where PO Mateo-Jerez was seated and issuing the summons. She was upset that the officers were issuing a summons and stated that they were harassing cab drivers. § 87(2)(b) said that the officers were "harassing the working man." PO Melenciano could not recall if § 87(2)(b) ever cursed or used obscene language. As § 87(2)(b) talked, she was very animated, moving her hands, and it looked like she was going to grab the summons. Sgt. Pekera asked her to go back to the car and said they would only be a few minutes. § 87(2)(b) continued to scream as PO Mateo-Jerez tried to finish preparing the summons. Sgt. Pekera asked her at least three times to go back to the car but she refused. A crowd had started to gather in front of a store and watch what was going on.

Sgt. Pekera then told her that if she didn't go back to the car she would be issued a summons for obstruction of governmental administration. § 87(2)(b) replied that he should do whatever he had to. Sgt. Pekera then asked her for identification and when § 87(2)(b) said she didn't have any, he informed her that if she didn't have any identification they would have to place her under arrest and take her to the precinct. § 87(2)(b) replied, "Do what you have to do."

All the officers exited the van and PO Mateo-Jerez approached the driver in order to issue him the summons. Sgt. Pekera tried to handcuff § 87(2)(b) but she moved around and positioned her son in between herself and the officers. Every time Sgt. Pekera tried to grab § 87(2)(b) her son was in the way. PO Melenciano moved the son aside and Sgt. Pekera was able to handcuff § 87(2)(b). § 87(2)(b) continued to scream. PO Melenciano did not hear Sgt. Pekera threaten to use his pepper spray. When PO Mateo-Jerez saw the struggle he approached them and made sure the son wasn't in the way.

Once she was handcuffed, PO Melenciano performed a field search of § 87(2)(b) and placed her in the van. At the precinct, it was discovered that § 87(2)(b) did have ID and she was issued two summonses. PO Melenciano affirmed that based on her observations and experience as a police officer, § 87(2)(b)'s behavior constituted disorderly conduct and in terms of the summons for harassment, PO Melenciano, explained that § 87(2)(b) "continually kept going back and forth and arguing with him."

Police Documentation

A copy of summons § 87(2)(b) shows that Sgt. Pekera issued § 87(2)(b) a summons for harassment in the second degree. New York State Penal Law (enc.14) shows that a person can be guilty of this violation when they engage in a "course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serves no legitimate purpose." She was additionally issued summons #§ 87(2)(b) (enc.13) for disorderly conduct, abusive language. New York State Penal Law (enc.1) shows that a person can be guilty of disorderly conduct when "In a public place, he uses abusive or obscene language." § 87(2)(b) stated that both summonses were dismissed and a call to the summons disposition retrieval line showed that there was no public record of the disposition of these summons. Numerous document requests were sent in an effort to obtain a copy of the summons PO Mateo-Jerez issued to the livery cab driver in the hopes of identifying him and obtaining a witness statement. The request was not fulfilled as there appeared to be some dispute about whether the summons was stored at the officers' precinct, the precinct of occurrence, or Sgt. Pekera's command. § 87(2)(g), § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian Criminal Conviction History and Subject Officer CCRB History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

A review of Sgt. Pekera's CCRB history (enc.6) shows that he has been a member of the force for seven years and has received two complaints prior to this one. The first complaint was truncated and the second is still pending.

Conclusions and Recommendations

Facts of the Case

§ 87(2)(b) complained that during her encounter with Sgt. Pekera, he threatened to arrest and pepper spray her and used physical force to take her into custody. § 87(2)(b), § 87(2)(g)

Allegations

Allegation A: Sergeant Gregory Pekera threatened to arrest § 87(2)(b)

§ 87(2)(b) complained that Sgt. Pekera told her "Do you have ID? Because you can be arrested if you don't?" Not only did Sgt. Pekera admit to threatening § 87(2)(b) with arrest but he also admitted that he threatened to issue her a summons for disorderly conduct. § 87(2)(b) did not allege being threatened with a summons. Sgt. Pekera's statement shows that he did not threaten her with arrest until after she told him that she didn't have identification. § 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 209-09 (enc.2) authorizes an officer to remove the suspect to the command for investigation should there be identification issues. § 87(2)(g)

Allegation B: Sergeant Gregory Pekera used physical force against § 87(2)(b)

§ 87(2)(b) also complained that Sgt. Pekera used physical force against her by pulling her arms behind her back and handcuffing her by leaning her over the trunk end of the car. Sgt. Pekera admitted to this use of force, explaining that he grabbed § 87(2)(b)'s hand, turned her around, and put her against the car in order to handcuff her. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) also admitted that she did not initially comply with Sgt. Pekera's orders to drop her pocketbook and keys, which were in the way when he was trying to handcuff her. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) did not allege that Sgt. Pekera punched or kicked her or used any further force once she was handcuffed. According to New York State Penal Law 35.30 (enc.3), an officer is authorized to use physical force "when and to the extent he reasonably believes such to be necessary" to effect an arrest. § 87(2)(g)

Allegation C: Sergeant Gregory Pekera threatened § 87(2)(b) with the use of pepper spray

§ 87(2)(b) complained that as Sgt. Pekera was attempting to handcuff her he threatened, "Your gonna make me mace you." § 87(2)(g)

He explained that after § 87(2)(b) did not comply with his verbal order to move her son out of the way and place her hands behind her back he told her, "Ma'am I'm not gonna fight you. If I have to, I'll mace you." During his CCRB interview, Sgt. Pekera explained that had § 87(2)(b) continued to ignore his orders he would have pepper sprayed her rather

than engage her in a physical altercation. § 87(2)(g)

§ 87(2)(b) quieted down after his threat and Sgt. Pekera was able to handcuff her without incident. In discussing the use of pepper spray devices, Patrol Guide Procedure 212-95 (enc.4) states that pepper spray can “reduce or eliminate the need for substantial physical force to effect an arrest of grain custody. It can also “reduce the potential for injuries to members and suspects” and it should be “regarded as a possible alternative” to the use of force. § 87(2)(g)

§ 87(2)(g). For example, Police Department V. Mraz (enc.5A-B) shows that the use of pepper spray should be regarded as an alternative to physical force and restraint. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: